

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the matter of:	)	
	)	
VONAGE HOLDINGS CORPORATION	)	WC-03-211
	)	
Petition for Declaratory Ruling Concerning	)	
An Order of the Minnesota Public	)	
Utilities Commission	)	

**COMMENTS OF THE IOWA UTILITIES BOARD**

**Introduction**

On September 26, 2003, the Federal Communications Commission (FCC) released notice entitled "*Pleading Cycle Established for Comments on Vonage Petition for Declaratory Ruling*" in WC Docket No. 03-211. The FCC is seeking comments on Vonage Holdings Corporation's (Vonage) petition to preempt a ruling by the Minnesota Public Utilities Commission that found Vonage's voice-over-Internet protocol (VoIP) service to be a "telephone service" under Minnesota law. This Petition for Declaratory Ruling was filed September 22, 2003. Vonage contends its VoIP service should be classified as information services, not telecommunications services.

**Discussion**

The Iowa Utilities Board has three points for the FCC to consider.

First, the standards and regulation of telecommunications services should be technologically neutral, that is, based on the function served rather than the equipment or protocol used. This is a premise of Iowa law. Iowa Code

§ 476.1(2003) states that the Board's jurisdiction depends on the service provided, not the type of technology used:

**476.1 Applicability of authority.**

The utilities board within the utilities division of the department of commerce shall regulate the rates and services of public utilities to the extent and in the manner hereinafter provided.

As used in this chapter, '*board*' or '*utilities board*' means the utilities board within the utilities division of the department of commerce.

As used in this chapter, "*public utility*" shall include any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for:

1. Furnishing gas by piped distribution system or electricity to the public for compensation.
2. **Furnishing communications services to the public for compensation.**
3. Furnishing water by piped distribution system to the public for compensation.

(Emphasis added.)

If the standards and regulation of telecommunications services are not technologically neutral, then there would be different treatments for similar services and artificial advantages and disadvantages that are not market-based would be created.

Second, states have the right and the obligation to examine local service issues. 47 USC § 253(b) preserves the states' authority to "ensure the continued quality of telecommunications services" within each state. 47 USC §§ 252(e)(3) and 251(d)(3) also reinforce the existence of certain state rights. Section 252(e)(3) authorizes a State commission, in its review of an interconnection agreement, to establish and to enforce "other requirements of State law[.]"

including compliance with intrastate telecommunications service quality standards or requirements." Section 251(d)(3) provides that the FCC shall not preclude the enforcement of any regulation, order, or policy of a state commission that (A) establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the requirements of § 251; and (C) does not substantially prevent implementation of the requirements of § 251 and the purposes of the Telecommunications Act of 1996.

Third, the FCC needs to examine VoIP in greater detail before taking any action. The current docket does not allow for extensive review of all the potential impacts this new technology may have on the telecommunications industry. It has the potential to undermine the existing methods of intercarrier compensation, resulting in a fundamental restructuring of the industry. Chairman Powell made a recent statement that the FCC was preparing a major examination of the regulation of VoIP services.<sup>1</sup> This examination should commence now, and the FCC should not grant Vonage's petition in this docket.

Other issues that should be explored by the FCC in such a proceeding are how calls made using VoIP technologies would pay into the federal Universal Service Fund; how VoIP calls will reach emergency "911" operators; and the impact of VoIP on the numbering pool, as well as number portability issues. Such a proceeding was envisioned by the National Association of Regulatory Utility Commissioners when it passed a resolution in February of this year urging

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<sup>1</sup> T.R. Daily, 10/1/03.

the FCC to engage the 706 Joint Conference in addressing these (and other) issues surrounding VoIP.

These issues would best be reviewed now, as VoIP is in its infancy and the volume of VoIP-originated calls is relatively low.

### **Conclusion**

The Iowa Utilities Board urges the FCC to (1) adopt a function-based view of telephone regulation; (2) deny Vonage's petition in this docket; and (3) open a separate, broad investigation of the issues associated with VOIP telephony, as described above.

October 27, 2003

Respectfully submitted,

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